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Bartell Hotels, a California Limited Partnership,
dba Half Moon Anchorage

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BARTELL HOTELS, A California Limited
Partnership, dba HALF MOON ANCHORAGE,

Plaintiff,

v.

M/Y CLAIRE IRENE, a 1968 Owens Motor
Yacht of Approximately 40-Foot In Length And
11-Foot In Beam, Bearing California D.M.V.
Registration No. CF 8646 ED, AND ALL OF
HER ENGINES, TACKLE, ACCESSORIES,
EQUIPMENT, FURNISHINGS AND
APPURTENANCES, *in rem*,

Defendant.

Case No. 07cv2097-L(BLM)

IN ADMIRALTY

SECOND APPLICATION FOR
APPOINTMENT OF SUBSTITUTE
CUSTODIAN AND FOR
AUTHORIZATION FOR
MOVEMENT OF DEFENDANT
VESSEL

F.R.C.P. Supplemental Admiralty
Rules C and E.

Plaintiff BARTELL HOTELS, by and through its attorneys, hereby respectfully submits its Second *Ex Parte* Application for Appointment of Substitute Custodian and For Authorization for Movement of Defendant Vessel. Apart from this Paragraph, the text of this Application is substantively identical to the Application for Appointment of Substitute Custodian and For Authorization for Movement of Defendant Vessel which Plaintiff earlier filed and which the Court earlier denied as moot, following its dismissal without prejudice of Plaintiff's Verified Complaint for Vessel Arrest for want of sufficient specificity. Plaintiff recently filed its First Amended Verified Complaint for Vessel Arrest (which details additional facts and has appended

1 an exemplar of the wharfage contract at issue), which, together with the simultaneously filed
2 Declaration of Michael J. Ardelt Concerning Existence of Month-to-Month Wharfage Contract.
3 Plaintiff believes now provide the requisite level of detail such that it will meet with the approval
4 of this Honorable Court.

5 BARTELL HOTELS, a California Limited Partnership, dba HALF MOON
6 ANCHORAGE ("PLAINTIFF"), by and through its attorneys, Weiss & Jones, L.L.P.
7 respectfully requests that the Court issue an Order appointing PLAINTIFF as the Substitute
8 Custodian of the Defendant Vessel, M/Y CLAIRE IRENE, a 1968 Owens Motor Yacht of
9 Approximately 40-Foot In Length And 11-Foot In Beam, Bearing California D.M.V.
10 Registration No. CF 8646 ED and all of her engines, tackle, accessories, equipment,
11 furnishings and appurtenances, etc. and all other necessities thereunto appertaining and
12 belonging (hereinafter "DEFENDANT VESSEL"), and in support thereof represents as
13 follows:

14 1. On or about October 31, 2007, the Verified Complaint herein was filed praying
15 the DEFENDANT VESSEL be condemned and sold to pay PLAINTIFF's demands and for
16 other proper relief.

17 2. It is anticipated that the Clerk of this Court will, pursuant to Order of this Court
18 on PLAINTIFF's Application therefor, issue a Warrant for Arrest of the DEFENDANT
19 VESSEL, commanding the United States Marshal for this District to arrest and take her into
20 custody and to detain her in its custody until further Order of this Court respecting same.

21 3. It is therefore contemplated that the United States Marshal will arrest the
22 DEFENDANT VESSEL forthwith. Custody by the United States Marshal requires the
23 services of a custodian, and does not include charges for wharfage and the other services
24 usually associated with safekeeping vessels similar to the DEFENDANT VESSEL.

25 4. DEFENDANT VESSEL is located currently at PLAINTIFF's marina, known
26 as Half Moon Anchorage, located at 2131 Shelter Island Drive, San Diego, California.
27 PLAINTIFF has agreed to assume the responsibility for safekeeping the said DEFENDANT
28 VESSEL where she is currently located and to act as her custodian until further Order of this

1 Court. PLAINTIFF avers it possesses adequate experience and background to maintain the
 2 DEFENDANT VESSEL safely in custody. It will provide, as necessary under the
 3 circumstances, the following services for the safekeeping of the DEFENDANT VESSEL, at
 4 a cost not to exceed those prevailing in the Port of San Diego, as described with further
 5 particularity in the Declaration of Richard Bartell:

6 a. Assume custody of the vessel from the United States Marshal at the place of
 7 her arrest, and keep her at its Marina until further Order of the Court;

8 b. As soon as possible after assuming custody of the vessel, photograph and/or
 9 video tape the interior and exterior, and prepare a written inventory of equipment and
 10 property aboard which is not installed as part of the vessel;

11 c. Periodically inspect mooring lines/fenders to assure safe and secure mooring;

12 d. Periodically as deemed prudent under the existing circumstances, but no less
 13 than weekly, inspect the vessel for watertight integrity, excessive bilge water and fuel,
 14 lubricant or other leaks. Where further action beyond those detailed herein is deemed
 15 necessary to preserve the vessel, PLAINTIFF shall advise counsel, so counsel can seek an
 16 appropriate order from the Court;

17 e. Provide additional services such as cleaning, minor maintenance, inspection of
 18 bottom by a diver for the purpose of cleaning and reporting findings regarding underwater
 19 hull, metal and zinc conditions, as such services are deemed prudent;

20 f. PLAINTIFF will operate only machinery described in a proper Court order;

21 g. Provide other such services as may be required from time-to-time, by further
 22 order of the Court. All services will be invoiced at rates not exceeding those prevailing in the
 23 Port of San Diego, and shall be subject to approval by the Court.

24 5. The substitute custodian will not sell the DEFENDANT VESSEL, release her
 25 to anyone and/or let anyone aboard her, other than in the case of emergency.

26 6. PLAINTIFF, by the Declaration of Richard Bartell, avers that it has adequate
 27 facilities and supervision for the proper safekeeping of the DEFENDANT VESSEL and that
 28 it maintains insurance policies which protect it against occurrences of negligence during its

1 custodianship. Those policies include, among others: (a) commercial liability with Fireman's
2 Fund, with a per occurrence limit of \$1,000,000.00 and (b) marine liability insurance with
3 Gemini Insurance, with a per occurrence limit of \$100,000.00. PLAINTIFF does not
4 maintain hull, machinery or protection and indemnity insurance. Further, in said Declaration
5 the Substitute Custodian accepts, in accordance with the terms of the Order Appointing
6 Substitute Custodian and Authorizing Movement of the Vessel, possession of the
7 DEFENDANT VESSEL, her engines, boilers, tackle, apparel, furnishings, appurtenances,
8 etc., and all other necessities thereunto appertaining and belonging, which is the subject of
9 the action herein.

10 7. PLAINTIFF, in consideration of the U.S. Marshal's consent to the substitution
11 of custodian, agrees to release the United States and the Marshal from any and all liability
12 and responsibility arising out of the care and custody of the DEFENDANT VESSEL, her
13 engines, boilers, tackle, apparel, furnishings, appurtenances, etc., and all other necessities
14 thereunto appertaining and belonging, from the time the Marshal transfers possession of the
15 DEFENDANT VESSEL over to said Substitute Custodian, and said PLAINTIFF further
16 agrees to hold harmless and indemnify the United States and the Marshal from any and all
17 claims whatsoever arising out of the substitute custodian's possession and safekeeping.

18 **WHEREFORE**, PLAINTIFF respectfully requests that an Order issue:

19 1. Authorizing and directing the United States Marshal for the Southern District.
20 upon his seizure of said DEFENDANT VESSEL, her engines, boilers, tackle, apparel,
21 furnishings, appurtenances, etc., and all other necessities thereunto appertaining and
22 belonging, pursuant to the Warrant for Arrest, to surrender the possession thereof to the
23 Substitute Custodian named herein, and directing that upon such surrender the Marshal shall
24 be discharged from his duties and responsibilities for the safekeeping of said vessel and held
25 harmless from any and all claims whatever arising out of said substituted possession and
26 safekeeping.

27 2. Providing that the Substitute Custodian named herein be appointed the
28 custodian of said DEFENDANT VESSEL to retain the same in its custody for possession and

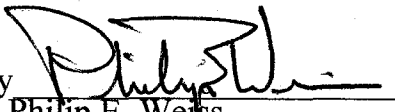
1 safekeeping, with authority to move her within its marina, for the aforementioned
2 compensation, at the rates prevailing in the Port and in accordance with the Declaration of
3 Richard Bartell and the recitals herein contained, until further Order of this Court.

4 3. PLAINTIFF's attorney will serve by mail a copy of said Order to the last
5 known address of DEFENDANT VESSEL's owner or apparent owner.

6 Dated: January 10, 2008

Respectfully submitted,

7 WEISS & JONES

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9 By 
10 Philip E. Weiss
11 Attorney for Plaintiff
12 Bartell Hotels,
13 a California Limited Partnership,
14 dba Half Moon Anchorage
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